

Around this same time, the United States and other world powers announced the structural framework for the ultimate deal with Iran. Michael Gordon and David Sanger, *Iran Agrees to Detail Nuclear Outline, First Step Toward a Wider Deal*, N.Y. Times (Apr. 2, 2015). Both during the talks and after the administration announced the final deal with the Iranians in mid-July 2015, opponents and supporters spent millions educating the public and encouraging citizens to express their views on an Iran deal directly to Congress. According to one estimate, opponents “shelled out \$13 million since the beginning of March to sink the deal, while supporters have spent \$2 million to promote it.” Patrick O’Connor, *The \$15*

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Million Ad Fight over the Iran Nuclear Deal, Wall Street Journal, Sept. 4, 2015. *Politico* subsequently reported that the American Israel Public Affairs Committee ("AIPAC") itself spent "more than \$20 million [on] a TV and grassroots lobbying effort during August aimed [at] convincing swing Democrats in the House and Senate to come out against the Iran agreement." John Bresnahan and Burgess Everett, *AIPAC Lobbies Senate Dems to Allow Disapproval Vote* (Sept. 9, 2015); see also Alisa Chang, *Lobbyists Spending Millions to Sway Undecided on Iran Deal*, NPR (Aug. 6, 2015) (noting that AIPAC and Citizens for a Nuclear Free Iran planned to spend up to \$40 million fighting the deal). During this period, even President Obama himself urged "thousands of supporters from across the country to push Congress to support the deal." David Jackson, *Obama Urges Backers to Lobby Congress for Iran Deal*, USA Today (July 30, 2015).¹

The purpose of these advertising campaigns was to "target key senators," Anna Palmer and Tarini Parti, *Iran Deal Launches Lobbying War*, *Politico* (July 14, 2015), whom the outside groups hoped "to sway by influencing public opinion for or against the deal," Ana Radelat, *Iran Deal Supporters, Opponents, Wage Ad War in Connecticut*, *Hartford Courant* (Aug. 25, 2015). Importantly, opponents of the deal also specifically looked for "opposition on the campaign trail from Republican presidential candidates [to] help in rallying opposition to the agreement." Anna Palmer and Tarini Parti, *Iran Deal Launches Lobbying War*; see also Jeff Poor, *Cotton Lobbies Dems, Presidential Candidates to Sign Letter Warning Iran about Nuke Deal*, *Breitbart* (Mar. 9, 2015) (quoting a leading senatorial critic of the Iranian negotiations as urging "any potential 2016 presidential candidate, including former Secretary of State Hillary Clinton," to sign onto a letter to Iran's leaders).

Throughout much of 2015, many identified Senator Rand Paul as a particularly important "wildcard" vote on any deal. James Antle, *Rand Paul Opposes Iran Deal*, *Washington Examiner* (July 14, 2015). Senator Paul's views often differed from his Republican colleagues on foreign policy matters, as evidenced when he earlier commented that he "believe[d] in negotiations" and would "'keep an open mind' about the nuclear talks" but remained largely silent

¹ These efforts continued into the summer, as the President "sought to quell a potential August mutiny," as there were "plenty of questions still to be answered on the deal." Nicole Puglise, *Amid Skepticism on Hill, Obama Steps Up Iran Deal Lobbying*, *Roll Call* (July 22, 2015); see also Billy House, *Lobbying Congress on Iran Deal Consumes Washington's Summer*, *Bloomberg Politics* (Aug. 3, 2015).

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about the ultimate agreement while other Republicans were denouncing it. Daniel Strauss, *Rand Paul Comes Out Against Iran Deal*, Politico (July 14, 2015); James Antle, *Rand Paul Opposes Iran Deal*; David Welna, *Senators to Review Bill Designed to Limit Iran Nuclear Deal*, post on Apr. 14, 2015 on NPR.org at 7:22 P.M.² In fact, when the deal was finally announced, President Obama remarked that it would “be interesting to see what somebody like a Rand Paul has to say about this.” Jordan Fabian, *Obama Calls Out Rand Paul on Iran Deal*, The Hill (July 14, 2015).

In the spring and summer of 2015, FSPA added its voice to the debate and joined those raising concerns over the negotiations with Iran. FSPA sought to influence the negotiations – and congressional approval of them – by persuading Senator Paul to take a tougher stance on the President’s diplomatic efforts and to reject the deal when it came to a vote in the Senate. To that end, FSPA ran several advertisements educating the public about the negotiations and encouraging citizens to contact Senator Paul with a message to reject “the president’s policy of concessions and appeasement” and – subsequently – to ask Senator Paul to “stop this disastrous deal.” FSPA, *New \$1 Million Ad Campaign Highlights Rand Paul’s Support for Obama’s Iran Policy*, available at <http://www.secureandprosperous.com/sanctions.html>; FSPA, *FSPA Releases New Ad Criticizing Sen. Rand Paul & Iran Deal*, available at <http://www.secureandprosperous.com/consequences.html>.

FSPA disseminated its first advertisement, entitled “Against Sanctions,” online and on broadcast television in April to coincide with Congress’s consideration of the bill to impose additional sanctions on Iran. *Id.*; see also *supra* at 2; Eli Lake, *Senator Kirk Puts Iran Sanctions Back in Play*, Bloomberg View (Apr. 9, 2015) (explaining that Senator Mark Kirk was making a renewed push “for a full Senate vote on his [sanctions bill]”). The ad was distributed both nationally and to viewers in New Hampshire, Iowa, South Carolina, and Nevada, which

² See also David Welna, *Senators to Review Bill Designed to Limit Iran Nuclear Deal*, post on Apr. 14, 2015 on NPR.org at 7:22 P.M. (noting Senator Paul’s “more moderate stance” on Iran and that he was “not one of the Republicans who will say, oh, because the president’s a Democrat, I’m never going to say he can do anything good. I believe in negotiations.”); Katie Zezima, *Rand Paul: “I am Still in Favor” of Continued Negotiations with Iran*, Washington Post (Apr. 10, 2015) (explaining that Senator Paul “believes that further negotiations should take place with Iran over its nuclear program”); David Weigel, *Rand Paul Finally, Sort of, Responds to the Iran Negotiations*, Bloomberg (Apr. 6, 2015) (observing that Senator Paul was ducking questions on Iran and that he “will be watching closely” for details about any agreement).

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matched the locations where Senator Paul would be – and who he would be listening to – in April. See James Carroll, *Paul Sets Five-State 2016 Announcement Tour*, Louisville Courier-Journal (Mar. 26, 2015). The advertisement's audio and visual text ran as follows:

<u>Audio</u>	<u>Video</u>
Narrator: "The Senate is considering tough new sanctions on Iran."	On-screen text: "Senate considering Tough New Sanctions on Iran."
"President Obama says he'll veto them. And Rand Paul is standing with him."	"He'll veto them. Rand Paul is Standing with Him."
"Rand Paul supports Obama's negotiations with Iran."	"Rand Paul Supports Obama's Negotiations With Iran."
"But he doesn't understand the threat."	"He doesn't understand the THREAT."
Senator Paul: "Our national security is not threatened by Iran having one nuclear weapon."	Image of Rand Paul speaking, followed by on-screen text: "Our National Security is NOT THREATENED by Iran HAVING ONE NUCLEAR WEAPON."
Narrator: "Rand Paul is wrong. . . and dangerous. Tell him to stop siding with Obama. Because even one Iranian bomb would be a disaster."	Images of protestors, followed by on-screen text: "RAND PAUL IS WRONG . . . and DANGEROUS."
	"Tell him to STOP Siding with Obama."
	One Iranian BOMB . . . Would be a DISASTER."
	"PAID FOR BY FOUNDATION FOR A SECURE AND PROSPEROUS AMERICA."

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FSPA, New \$1 Million Ad Campaign Highlights Rand Paul's Support for Obama's Iran Policy.

Another advertisement, entitled "Consequences," aired during the lobbying effort that "followed lawmakers home for the August recess." Peter Overby, *Iran Lobbying Battle Heats Up on the Airwaves*, NPR (Aug. 20, 2015); see also Alisa Chang, *Lobbyists Spending Millions to Sway Undecided on Iran Deal*, NPR (Aug. 6, 2015) (observing that "members won't be escaping the lobbying blitz on the Iran deal that's sure to hound them back home"). Again, FSPA targeted this ad to where Senator Paul would be during the August recess – Iowa and New Hampshire – as public and congressional debate over the vote on the final deal with Iran intensified. FSPA, *FSPA Releases New Ad Criticizing Sen. Rand Paul & Iran Deal*; Rand Paul for President, *Events*, available at <https://www.randpaul.com/events> (noting Rand Paul's numerous appearances in Iowa and New Hampshire in early-to-mid August 2015). This advertisement's audio and video text was as follows:

<u>Audio</u>	<u>Video</u>
Narrator: "Rand Paul supported President Obama's negotiations with Iran."	Images of Rand Paul and Barack Obama speaking, with the words "RAND PAUL SUPPORTED NEGOTIATIONS WITH IRAN" at the bottom of the screen.
Senator Paul: "Well, I'm kind of one of the Senators who's in favor of negotiations with Iran. . . . I've been a big proponent of negotiation."	Video clip of Rand Paul interview, accompanied by the text "I'm kind of one of the Senators in favor of negotiations with Iran."
Narrator: "Actions have consequences."	Video clip of second Rand Paul interview, accompanied by the words "I've been a big proponent of negotiation."
Narrator: "Actions have consequences."	On screen text: "ACTIONS HAVE CONSEQUENCES."
"Now Obama has made a nuclear	Images of President Obama speaking,

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<p>deal with Iran, lifting the ballistic missile embargo and giving them a path to nuclear weapons.</p> <p>"Call Rand Paul. Tell him to stop siding with Obama and to stand up to Iran."</p>	<p>followed by footage of individuals with the words "Death to America" appearing on-screen, and then the on-screen text: "LIFTING MISSILE EMBARGO Source: NBC's 'Meet the Press,' 7/19/15."</p> <p>Image of Rand Paul and President Obama on screen together.</p> <p>"Stop Supporting Obama's Negotiations AND STOP THIS DEAL. CALL SEN. RAND PAUL 202-224-4343.</p> <p>PAID FOR BY FOUNDATION FOR A SECURE AND PROSPEROUS AMERICA."</p>
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FSPA, FSPA Releases New Ad Criticizing Sen. Rand Paul & Iran Deal.

Both of these advertisements were posted on FSPA's website. The FSPA website also explained FSPA's general policy-influencing goals and objectives and provided the following guidance to those interested in making a donation to further FSPA's overall mission:

Contributions to FSPA are not deductible as charitable contributions. There is no limit on the amount that can be contributed, and there is no public disclosure under the tax rules of the identity of donors.

FSPA, *Foundation for a Secure and Prosperous America*, available at <http://www.secureandprosperous.com/>.³

³ The Complaint references additional language that purportedly appeared on the website identifying the online and physical locations where donations could be transmitted. This language is

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FSPA also disseminated several other Internet videos through its YouTube channel. The audio and visual text for those advertisements is included as Exhibits 1-6.⁴ These advertisements were posted within the same general timeframes as the two television advertisements just discussed, referenced the same themes, and did not include any election-influencing language.

On September 10, 2015, Senate Democrats ended consideration and voting on the Iran deal when they "filibustered the disapproval resolution that Republicans and other deal opponents had tried to send to Obama's desk." Seung Min Kim and Burgess Everett, *Senate Dems Block GOP Measure to Kill Iran Deal*, Politico (Sept. 10, 2015). The next month, on October 15, 2015, the Commission received the Complaint initiating this matter. In generalized language and without complete legal clarity, it alleged as follows:

SPECIFIC VIOLATIONS UNDER THE COMMISSION'S JURISDICTION

I am reporting that a PAC did not file for the June Deadline. Foundation for a Secure & Prosperous America has spent over \$1 million dollars on TV advertisements. FPSA [sic] has solicited donations from the public during the 2015 calendar year. FPSA [sic] has a Youtube channel which features several videos online. These videos represent expenditures which should have been reported to the FEC.

Subsequent pages of the Complaint provided documentation allegedly supporting these claims, including information drawn from and advertisements located on FSPA's website and YouTube channel.

not currently on the website and, in any event, does not change the ultimate analysis provided later in this response.

⁴ The Complaint references a seventh YouTube video, called "Sanctions," but states that this "video is no longer available due to a copyright claim by Gage Skidmore." This Internet ad was identical to the "Against Sanctions" ad that ran on television, with the exception that one photographic image of Senator Paul was replaced in the version currently available online.

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LEGAL FRAMEWORK

The Complaint's allegations appear to implicate two separate – but closely related – areas of federal campaign finance law: (1) the definition of a “political committee,” and the related terms “contribution” and “expenditure;” and (2) the Commission's independent expenditure reporting requirements.

I. The Statutory and Constitutional Tests for Regulation as a Political Committee.

To be an FEC-regulated “political committee,” an organization must satisfy both a statutory and a constitutional test. *See Political Committee Status*, 72 Fed. Reg. 5595, 5597 (Feb. 7, 2007). As to the statutory component, the FECA defines “political committee,” in relevant part, as “any committee, club, association, or other group of persons which receives contributions aggregating in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year.” 52 U.S.C. § 30101(4)(A).

A "contribution," in turn, includes "anything of value made by any person for the purpose of influencing any election for Federal office." *Id.*

§ 30101(8)(A)(i). An "expenditure," in relevant part, is "any purchase payment, . . . or anything of value, made by any person for the purpose of influencing any election for Federal office." *Id.* § 30101(9)(A)(i). After the Supreme Court narrowed the definition of expenditure to include only those communications that expressly advocate the election or defeat of a clearly identified candidate, *Buckley v. Valeo*, 424 U.S. 1, 44 & n.52, 80 & n.108 (1976), the FEC created a two-part test to determine whether a communication contains "express advocacy" and is thus a regulated expenditure. Part (a) of the FEC's definition includes communications that use explicit words of express advocacy such as "vote for," "elect," "defeat," etc. 11 C.F.R. § 100.22(a). Part (b) is broader and incorporates a communication that,

When taken as a whole and with limited reference to external events, such as the proximity to the election, could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s) because –

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(1) The electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning; and

(2) Reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidates(s) or encourages some other kind of action.

Id. § 100.22(b).⁵

In addition to the statutory test, the Supreme Court and lower federal courts have applied constitutional principles to consistently construe “the words ‘political committee’ . . . narrowly [to] only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate.” *Buckley v. Valeo*, 424 U.S. 1, 79 (1976) (emphasis added); *see also* *FEC v. Mass. Citizens for Life, Inc.*, 479 U.S. 238, 252 n.6 (1986) (“MCFL”) (reaffirming *Buckley*); *Political Committee Status*, 72 Fed. Reg. at 5601 (recognizing that an organization “must . . . have the major purpose of engaging in Federal campaign activity” before it may be regulated as a political committee). In *Buckley v. Valeo*, 519 F.2d 821, 863 (D.C. Cir. 1975) (en banc), aff’d in part and reversed in part, 424 U.S. 1 (1976), for example, the United States Court of Appeals for the District of Columbia Circuit emphasized that the political committee definition had to be narrowly construed “since it potentially reaches . . . the activities of nonpartisan issue groups which [are limited to] influencing the public to demand of candidates that they take certain stands on the issues.” In citing this language approvingly, the Supreme Court confirmed that the political committee

⁵ Subsection 100.22(b)’s definition of express advocacy has been controversial since its enactment because it is vague and provides little objective, bright-line guidance to speakers in contravention of core First Amendment principles. *See, e.g., Maine Right to Life Comm., Inc. v. FEC*, 914 F. Supp. 8 (D. Me. 1996) (“MRLC”); *Right to Life of Dutchess Cnty., Inc. v. FEC*, 6 F. Supp. 2d 248, 253-54 (S.D.N.Y. 1998); MUR 5974, Statement of Reasons of Vice Chairman Matthew S. Peterson and Commissioners Caroline C. Hunter and Donald F. McGahn, at 4 n.10 (May 29, 2009) (collecting case law and FEC authority questioning and/or invalidating this subsection). Since the communications at issue here are not express advocacy under either subsections (a) or (b), FSPA is not at this time raising a question as to the continuing validity of subsection (b) – although FSPA reserves its right to do so in future proceedings, as necessary.

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definition should not be stretched to apply "to reach groups engaged purely in issue discussion." *Buckley*, 424 U.S. at 79.

II. The Commission's Independent Expenditure Reporting Requirements.

The Complaint's allegations may also implicate the Commission's independent expenditure reporting requirements. The term "independent expenditure" means "an expenditure by a person:"

(A) expressly advocating the election or defeat of a clearly identified candidate; and

(B) that is not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate's authorized political committee, or their agents, or a political party committee or its agents.

52 U.S.C. § 30101(17). The meaning of the phrase "expressly advocating" is drawn from the Commission's regulation at 11 C.F.R. § 100.22 discussed in the preceding section. Every person "who makes independent expenditures in an aggregate amount of value in excess of \$250 during a calendar year" must file a report with the FEC disclosing certain information. *Id.* § 30104(c); *see also* 11 C.F.R. § 109.10.

ANALYSIS

The Complaint's principal allegation is that FSPA is a political committee that failed to register and report with the Commission. The Complaint arguably makes a second, independent allegation, namely that FSPA's advertisements should have been reported as independent expenditures even if FSPA was not a political committee. Neither allegation has merit.

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I. FSPA Did Not Engage in Activity That Made It a Political Committee.

As outlined above, “determining political committee status under FECA, as modified by the Supreme Court, requires an analysis of both an organization’s specific conduct—whether it received \$1,000 in contributions or made \$1,000 in expenditures—as well as its overall conduct—whether its major purpose is Federal campaign activity (i.e., the nomination or election of a Federal candidate).” *Political Committee Status*, 72 Fed. Reg. at 5597. As discussed in the following sections, FSPA did not cross any of these regulatory thresholds.

A. FSPA Did Not Make Any Expenditures.

The central thrust of the Complaint’s allegations is that the grassroots lobbying advertisements urging citizens to contact Senator Paul are expenditures for candidate advocacy that count toward the \$1,000 expenditure threshold for political committee status. For that to be the case, the communications must contain express advocacy under 11 C.F.R. § 100.22 subpart (a) or subpart (b).

As the text and video of each ad clearly reflects, none of the communications at issue here used the type of explicit words of express advocacy identified in subpart (a) – e.g., “vote for,” “defeat,” etc. Furthermore, as to subpart (b), there is no “electoral portion of the communication” at all, let alone an electoral portion that is “unmistakable, unambiguous, and suggestive of only one meaning.” Moreover, a reasonable person could not conclude that the sole interpretation of these ads was to advocate for the defeat of presidential candidate Rand Paul. Indeed, the only reasonable interpretation of the ads is that they were efforts to influence Senator Rand Paul’s position on the Iranian negotiations. The period when these advertisements ran – the spring and summer of 2015 – was when the Iranian negotiations were at their height and there was maximum congressional interest in them. *See supra* at 2-4, 8. Senator Paul’s vote, views, and voice all mattered in those debates. *See, e.g., supra* at 3-4. Given his past statements suggesting that a more lenient approach to the Iran negotiations was appropriate, *see supra* at 3, 4 n.2, FSPA wanted to affect Senator Paul’s rhetoric and, ultimately, his vote on both the initial sanctions bill being debated in April as well as the final deal negotiated by the President in advance of the August recess.

To achieve these goals, FSPA ran television and online advertisements designed to speak to people who had the attention of Senator Paul during those

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times. Because Senator Paul was not with his Kentucky constituents, FSPA determined that focusing its educational and lobbying efforts on them would be of limited value. While most legislators may have been readily accessible in their home districts, Senator Paul's campaign travel schedule left fewer opportunities for Kentuckians to influence him. Accordingly, FSPA expanded its grassroots lobbying efforts and directed them to people in the same jurisdictions where Senator Paul would be located in April and August and who, therefore, had his attention and could shape his thinking on the Iran deal. All of this was done well in advance of any election, which subpart (b) indicates is a relevant criterion for consideration.

Thus, there is no basis for concluding that the only interpretation a reasonable person would have of the ads was that they were intended to elect or defeat candidate Rand Paul. In fact, the only reasonable conclusion is just the opposite – that these were issue ads designed to influence Senator Paul's vote on a pending legislative issue of intense national debate. Thus, the ads were not regulated "expenditures" for candidate advocacy and, therefore, the first statutory criterion for political committee status – that an organization has spent in excess of \$1,000 on expenditures – was not satisfied.⁶

⁶ In fact, federal courts have gone a step farther and said that groups engaging in speech that is arguably closer to candidate advocacy – i.e., running advertisements to influence the positions of candidates in their capacities as candidates – are exempt from regulation. For example, in *Buckley v. Valeo*, 519 F.2d 821, 863 (D.C. Cir. 1975) (en banc), aff'd in part and reversed in part, 424 U.S. 1 (1976), the United States Court of Appeals for the District of Columbia Circuit emphasized that the political committee definition had to be narrowly construed "since it potentially reaches . . . the activities of nonpartisan issue groups which [are limited to] influencing the public to demand of candidates that they take certain stands on the issues." (Emphasis added.) When it approvingly cited this language, the Supreme Court confirmed that the political committee definition should not be stretched to apply "to reach groups engaged purely in issue discussion" about a candidate's positions. *Buckley*, 424 U.S. at 79.

Furthermore, the advertisements are not subject to regulation as electioneering communications. An "electioneering communication" is a television or radio communication that (1) references a clearly identified candidate for federal office; (2) is run within 30 days of a primary/convention/caucus or 60 days of a general election; and (3) can be received by more than a certain number of persons in the jurisdiction where the candidate is running for office. See 52 U.S.C. § 30104(f)(3).

All of the advertisements here were run well in advance of any electioneering communication windows. The first presidential "elections" of 2016 are the Iowa Republican and Democratic caucuses, which take place on February 1, 2016. See Republican Party of Iowa, *First in*

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B. FSPA Did Not Receive Any Contributions.

The Complaint suggests that FSPA accepted contributions by putting a disclaimer on its website that funds given to the organization “are not deductible as charitable contributions,” that there “is no limit on the amount that can be contributed,” and “there is no public disclosure under the tax rules of the identity of donors.” Contrary to the Complaint’s implied assertions, nothing in this disclaimer suggests that funds given to FSPA will be used to support or defeat candidates or otherwise qualify as regulated “contributions,” which must be given “for the purpose of influencing any election.” 52 U.S.C. § 30101(8)(A)(i). The disclaimer language references neither a candidate nor an election. Instead, the disclaimer merely conveys certain factual information that is consistent with FSPA’s status as a 501(c)(4) organization.

In any event, FSPA’s funds were not used “for the purpose of influencing any election,” the operative phrase in both the definitions of “contribution” and “expenditure.” As just explained, FSPA did not engage in “expenditures” “for the purpose of influencing any election.” Therefore, FSPA’s funding cannot be rightly characterized as “for the purpose of influencing election,” i.e., as a “contribution.” Thus, there is no basis for concluding that FSPA “receive[d] contributions”, as that terminology is used in the definition of a political committee or elsewhere in federal campaign finance law. *Id.* § 30104(4)(A).

C. FSPA’s Major Purpose Was Not to Elect Candidates, And In Any Event, The Complaint Fails to Even Allege This Essential Fact.

At the outset, the Complaint fails to allege, either factually or as a matter of law, that FSPA’s “major purpose” is influencing elections. This is a constitutionally-mandated threshold that must be satisfied before the Commission can regulate an organization as a political committee, *see supra* at 10-11. Critically, 11 C.F.R. § 111.4(d)(3) requires the Complaint to include “a clear and concise recitation of facts which describe a violation” in order to avoid unsubstantiated complaints and the expense and effort associated with disproving them. Here, the

the Nation Caucuses, available at <https://www.iowagop.org/>; Iowa Democratic Party, *2016 Iowa Caucuses: About*, available at <http://iowademocrats.org/about-iowa-caucuses/>. The last of FSPA’s advertisements ran on television more than four months before the start of the electioneering communication window that opens 30 days in advance of these caucuses – i.e., on January 2, 2016.

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failure to include that element – and the factual basis for it – prejudices FSPA and should be fatal to the Complaint.

Furthermore, as discussed above, none of FSPA's advertisements constituted regulated "expenditures" "for the purpose of influencing any election." FSPA cannot have the "major purpose" of supporting or defeating candidates if none of its funds were spent to influence an election. *See, e.g., Buckley*, 424 U.S. at 79 (political committee status should not be conferred on "groups engaged purely in issue discussion").

Thus, on both procedural and substantive grounds, there is no basis for the Commission to find reason to believe that FSPA's "major purpose" was to elect or defeat candidates. For this reason too, FSPA does not qualify as a political committee.

II. None of the Advertisements Are Reportable As Independent Expenditures Either.

In order for communications to be reportable as independent expenditures, they must first qualify as "expenditures." As previously discussed, none of the advertisements contain the explicit words of express advocacy identified in 11 C.F.R. § 100.22(a). Moreover, none of the ads contain an "electoral portion," let alone an electoral portion that is unmistakable and unambiguous, and a reasonable person would not conclude that the ads could only be interpreted as a vote against Rand Paul as required by 11 C.F.R. § 100.22(b). Accordingly, there is no reason to believe FSPA violated the FEC's reporting requirements for independent expenditures.⁷

CONCLUSION

FSPA was not a political committee. Its communications were designed to sway public opinion, and ultimately Senator Paul, to use his legislative powers to influence the President's negotiations with Iran and Senate disapproval of them. The fact that Senator Paul was also a presidential candidate at the time these

⁷ In fact, FSPA has previously filed independent expenditure reports when its advertisements contained express advocacy. For example, two FEC Form 5s filed by FSPA are available at <http://doquery.fec.gov/pdf/937/10931531937/10931531937.pdf> and <http://doquery.fec.gov/pdf/983/10931531983/10931531983.pdf>.



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advertisements were run was irrelevant to FSPA, except to the extent that any grassroots lobbying advertisements had to be placed in markets to match Senator Paul's physical location. None of the ads called for Senator Paul's election or defeat using explicit words of express advocacy, nor did they contain other indicia suggesting that they were intended to influence his election. Without these elements, there is no reason to believe that FSPA was a political committee. Furthermore, to the extent the Complaint alleges that FSPA's advertisements were separately reportable as independent expenditures, those allegations fail for the same reasons. Accordingly, the Commission should dismiss the Complaint.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Caleb P. Burns", with a stylized flourish at the end.

Caleb P. Burns

Enclosures

Exhibit 1: "Dangerous"

<u>Audio</u>	<u>Video</u>
<p>Narrator: "Radical Islam on the March. Americans killed. Iran on the nuclear threshold. And Obama is trying to cut a deal to let Iran keep its nuclear program."</p>	<p>Various images of terrorists and weapons, followed by "A Disastrous Deal with Iran.. Source: New York Observer, 3/31/15."</p>
<p>"One Republican doesn't get it."</p>	<p>"One Republican doesn't get it"</p>
<p>"Rand Paul- he supports Obama's appeasement of Iran."</p>	<p>"Rand Paul: Nuclear Iran Not a Threat to the United States. Source Washington Free Beacon, 4/18/14."</p>
<p>Senator Paul: "Our national security is not threatened by Iran having one nuclear weapon."</p>	<p>Clip of Rand Paul speaking, followed by on-screen text: "Our National security is not threated by Iran having one nuclear weapon."</p>
<p>Narrator: "Tell Rand Paul to stand up to Obama and Iran, because even one Iranian bomb would be a disaster."</p>	<p>"Tell Rand to stand up to Obama and Iran"</p>
	<p>"PAID FOR BY FOUNDATION FOR A SECURE AND PROSPEROUS AMERICA."</p>

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<u>Audio</u>	<u>Video</u>
Narrator: "The Senate is considering tough new sanctions on Iran."	On-screen text: "Senate considering Tough New Sanctions on Iran."
"President Obama says he'll veto them. And Rand Paul is standing with him."	"He'll Veto Them. Rand Paul is Standing with Him."
"Rand Paul supports Obama's negotiations with Iran."	"Rand Paul Supports Obama's Negotiations With Iran"
"But he doesn't understand the threat."	"He doesn't understand the THREAT"
Senator Paul: "Our national security is not threatened by Iran having one nuclear weapon."	Image of Rand Paul speaking, followed by on-screen text: "Our National Security is NOT THREATENED by Iran HAVING ONE NUCLEAR WEAPON"
Narrator: "Rand Paul is wrong . . . and dangerous. Tell him to stop siding with Obama. Because even one Iranian bomb would be a disaster."	Images of protestors, followed by on-screen text: "RAND PAUL IS WRONG . . . and DANGEROUS"
	"Tell him to STOP Siding with Obama." One Iranian BOMB . . . Would be a DISASTER"
	"PAID FOR BY FOUNDATION FOR A SECURE AND PROSPEROUS AMERICA."

Video

On-screen text: "Senate considering Tough New Sanctions on Iran."

"He'll Veto Them. Rand Paul is Standing with Him."

"Rand Paul Supports Obama's Negotiations With Iran"

"He doesn't understand the THREAT"

Image of Rand Paul speaking, followed by on-screen text: "Our National Security is NOT THREATENED by Iran HAVING ONE NUCLEAR WEAPON"

Images of protestors, followed by on-screen text: "RAND PAUL IS WRONG . . . and DANGEROUS"

"Tell him to STOP Siding with Obama."
One Iranian BOMB . . . Would be a
DISASTER"

"PAID FOR BY FOUNDATION FOR A
SECURE AND PROSPEROUS AMERICA."

On-screen text: "Senate considering Tough New Sanctions on Iran."

"He'll Veto Them. Rand Paul is Standing with Him."

“Rand Paul Supports Obama’s Negotiations With Iran”

“He doesn’t understand the THREAT”

Image of Rand Paul speaking, followed by on-screen text: "Our National Security is NOT THREATENED by Iran HAVING ONE NUCLEAR WEAPON"

Images of protestors, followed by on-screen text: "RAND PAUL IS WRONG . . . and DANGEROUS"

**"Tell him to STOP Siding with Obama."
One Iranian BOMB . . . Would be a
DISASTER"**

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SECURE AND PROSPEROUS AMERICA."**

Exhibit 4: "Consequences"

Audio

Narrator: "Rand Paul supported President Obama's negotiations with Iran."

Senator Paul: "Well I'm kind of one of the Senators who's in favor of negotiations with Iran."

"I've been a big proponent of negotiation"

Narrator: "Actions have consequences"

"Now Obama has made a nuclear deal with Iran, lifting the ballistic missile embargo, and giving them a path to nuclear weapons."

"Call Rand Paul, tell him to stop siding with Obama, and to stand up to Iran"

Video

**"RAND PAUL SUPPORTED
NEGOTIATIONS WITH IRAN"**

Clip of Rand Paul stating: "I'm kind of one of the Senators in favor of negotiations with Iran."

Clip of Rand Paul stating: "I've been a big proponent of negotiation"

On-screen text: **"ACTIONS HAVE
CONSEQUENCES"**

Images of President Obama speaking, followed by footage of individuals with the words "Death to America" appearing on-screen, and then the on-screen text: **"LIFTING MISSILE EMBARGO** Source: NBC's 'Meet the Press,' 7/19/15."

[Image of Rand Paul and President Obama on screen together.]

**"Stop Supporting
Obama's Negotiations
AND STOP THIS DEAL.
CALL SEN. RAND PAUL
202-224-4343.**

**PAID FOR BY FOUNDATION
FOR A SECURE AND
PROSPEROUS AMERICA."**

Exhibit 5: "Tick-Tick Snapchat"

Audio

Senator Paul: I'm kind of one of the Senators who's in favor of negotiations with Iran."

Narrator: "So tell Rand Paul he was wrong to trust Obama, because we can't afford this deadly deal."

Video

"Iran Nuclear Deal Gives MORE MONEY to fund terrorism' - Jerusalem Post"

"STOP SUPPORTING OBAMA'S NEGOTIATIONS AND STOP THIS DEAL. Call Sen. Paul 202-224-4343"

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Narrator: Rand Paul supported Obama's negotiations with Iran.

"This is where I differ from some Republicans; I still am in favor of continued negotiations."

"Iran's nuclear program remains just years from a bomb."

Video

Image of Rand Paul being interviewed

“Iran nuclear deal gives MORE MONEY to fund terrorism’- Jerusalem Post”

"Intelligence Chairman: deal paves WAY FOR IRANIAN BOMB" - Bloomberg"

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